

EXHIBIT 5

PUBLIC-REDACTED VERSION

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Lasinski, Michael J.

February 17, 2021

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MONARCH NETWORKING

SOLUTIONS LLC,

Plaintiff,

CIVIL ACTION NO.

v.

2:20-CV-00015-JRG

CISCO SYSTEMS, INC.,

Defendant.

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VIDEOTAPED DEPOSITION of MICHAEL J. LASINSKI,
taken remotely, on February 17, 2021 commencing at
9:10 a.m. eastern time, before Jeffrey Benz, a
Certified Realtime Reporter, Registered Merit
Reporter and Notary Public within and for the
State of New York.

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Lasinski, Michael J.

February 17, 2021

2 (Pages 2 to 5)

<p>2</p> <p>1 A P P E A R A N C E S:</p> <p>3 SUSMAN GODFREY L.L.P. 4 Attorneys for Plaintiff 5 1201 3rd Avenue 6 Seattle, Washington 98101 7 BY: KATHERINE PEASLEE, ESQ. 8 KPeaslee@susmangodfrey.com 9 206-505-3828</p> <p>10 DESMARAIS LLP 11 Attorneys for Defendant 12 230 Park Avenue 13 New York, New York 10169 14 BY: TAMIR PACKIN, ESQ. 15 tparkin@desmaraisllp.com 16 212-351-3403</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT: 20 JOE TOWNSEND, Videographer 21 DAVID NELSON, Videographer Assistant</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>4</p> <p>1 THE VIDEOGRAPHER: Here begins the 2 videotape deposition of Michael Lasinski, 3 taken of the matter of Monarch Networking 4 Solutions LLC, v. Cisco Systems, Incorporated 5 and Charter Communications, Incorporated, in 6 the United States District Court, for the 7 Eastern District of Texas, Marshall Division. 8 Case Number 220-CV-00015-JRG.</p> <p>9 Today's date is February 17, 2021. The 10 time is 9:10 a.m. eastern. This deposition 11 is being held remotely via Zoom video 12 conferencing software.</p> <p>13 The court reporter is Jeff Benz. I am 14 Joe Townsend, the video camera operator, and 15 we are both here on behalf of Henderson Legal 16 Services.</p> <p>17 Will counsel please introduce themselves 18 and state whom they represent.</p> <p>19 MS. PEASLEE: Katherine Peaslee on 20 behalf of plaintiff Monarch.</p> <p>21 MR. PACKIN: Tamir Packin from Desmarais 22 LLP on behalf of Cisco Systems, Inc.</p> <p>23 THE VIDEOGRAPHER: Will the court 24 reporter please swear in the witness, after 25 which we can proceed.</p>																																													
<p>3</p> <table> <thead> <tr> <th colspan="3">INDEX</th> </tr> <tr> <th colspan="3">MICHAEL J. LASINSKI</th> </tr> <tr> <th>Examination by:</th> <th>Page</th> <th></th> </tr> </thead> <tbody> <tr> <td>MR. PACKIN</td> <td>6</td> <td></td> </tr> <tr> <td colspan="3">EXHIBITS</td> </tr> <tr> <th>Number</th> <th>Description</th> <th>Page</th> </tr> <tr> <td>Exhibit 1</td> <td>PDF copy of expert report of Michael Lasinski</td> <td>7</td> </tr> <tr> <td>Exhibit 2</td> <td>Native Excel versions of Exhibit C</td> <td>7</td> </tr> <tr> <td>Exhibit 3</td> <td>Preliminary EGM MAP Pricing</td> <td>73</td> </tr> <tr> <td>Exhibit 4</td> <td>Cisco-MON-EDT-00009908</td> <td>130</td> </tr> <tr> <td>Exhibit 5</td> <td>Cisco Adaptive Security Appliance Mapping, Cisco-MON-EDT-00030946</td> <td>133</td> </tr> <tr> <td>Exhibit 6</td> <td>NAICS code for 334118</td> <td>160</td> </tr> <tr> <td>Exhibit 7</td> <td>NAICS code 334210</td> <td>163</td> </tr> <tr> <td>Exhibit 8</td> <td>iPhone Agreement Amended and Restated Effective January 1, 2017</td> <td>223</td> </tr> <tr> <td>Exhibit 9</td> <td>Mr. Reading's Expert Report</td> <td>252</td> </tr> </tbody> </table> <p>25</p>	INDEX			MICHAEL J. LASINSKI			Examination by:	Page		MR. PACKIN	6		EXHIBITS			Number	Description	Page	Exhibit 1	PDF copy of expert report of Michael Lasinski	7	Exhibit 2	Native Excel versions of Exhibit C	7	Exhibit 3	Preliminary EGM MAP Pricing	73	Exhibit 4	Cisco-MON-EDT-00009908	130	Exhibit 5	Cisco Adaptive Security Appliance Mapping, Cisco-MON-EDT-00030946	133	Exhibit 6	NAICS code for 334118	160	Exhibit 7	NAICS code 334210	163	Exhibit 8	iPhone Agreement Amended and Restated Effective January 1, 2017	223	Exhibit 9	Mr. Reading's Expert Report	252	<p>5</p> <p>1 THE COURT REPORTER: I'm going to read a stipulation into the record and ask counsel to agree.</p> <p>2 The attorneys participating in this deposition acknowledge that I am not present in the room and will be reporting this deposition remotely.</p> <p>3 They further acknowledge that in lieu of an oath administered in person, the witness will be sworn in remotely.</p> <p>4 The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record.</p> <p>5 Counsel?</p> <p>6 MS. PEASLEE: Katherine Peaslee of Susman Godfrey on behalf of plaintiffs, so stipulated.</p> <p>7 MR. PACKIN: Tamir Packin, I agree.</p> <p>8 MICHAEL LASINSKI, called as a witness, having been first</p> <p>9 duly sworn by Jeffrey Benz, a Notary Public within and for the State of New</p> <p>10 York, was examined and testified as</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
INDEX																																														
MICHAEL J. LASINSKI																																														
Examination by:	Page																																													
MR. PACKIN	6																																													
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Exhibit 1	PDF copy of expert report of Michael Lasinski	7																																												
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Lasinski, Michael J.

February 17, 2021

3 (Pages 6 to 9)

1 follows: 2 EXAMINATION BY MR. PACKIN: 3 Q. Good morning. 4 A. Good morning. 5 Q. You've been deposed plenty of times 6 before. Right? 7 A. I have been, numerous times. 8 Q. Okay. So if -- have you -- have you 9 been deposed by Zoom already? 10 A. I have, yes. 11 Q. Okay. So, you're familiar with the 12 procedure. If you don't hear me at any point in 13 time, or don't understand, just let me know, and 14 I'll repeat or rephrase or we'll figure out if 15 there's a technical problem, okay? 16 A. Okay. 17 Q. And you understand that you're under 18 oath? 19 A. I do. 20 Q. Did you receive the link to the 21 Henderson share file folder that has the -- has 22 exhibits in it? 23 A. I -- I did receive a link, but it does 24 not seem to have any exhibits in it. 25 Oh, wait, now it does. I just refreshed	6	1 did put the security code for the Zoom today on 2 the front page of it. But that's the only marking 3 that I put on it. 4 Q. Okay. So feel free to look at the paper 5 copy if that's easier for you. I'm looking at a 6 paper copy myself just because that's how I'm 7 accustomed to doing things, and if we need to try 8 to get on the same page literally, I could share 9 my screen, and we can resync and then go back to 10 the paper copies, but I -- I find it easier to use 11 that one as well. 12 A. Okay. 13 Q. Can you just confirm that the paper copy 14 that you have in front of you is the same thing as 15 what I've marked as Lasinski Exhibit 1, just so 16 that we've got our Is dotted and Ts crossed? 17 A. Sure. I'm opening the -- the copy now. 18 I mean, as far as I can tell it is. I 19 haven't read every -- every page, obviously, of 20 the electronic copy, but it's the same number of 21 pages, and at least scrolling through it, it looks 22 the same. 23 Q. Okay. Great. 24 Other than the -- the physical copy of 25 your report that we've marked as Lasinski	8
1 it. 2 Q. Oh, I guess -- I put it in yesterday, 3 but I guess it only goes live once we start the 4 deposition. 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 Do you see those? 17 A. Yes. 18 Q. And do you -- do you have your own copy 19 of your expert report that you're using, a paper 20 copy? 21 A. I did, I -- I brought a paper copy, yes. 22 Q. Okay. That -- that's perfectly fine. 23 Are there any notes in that copy of your 24 report? 25 A. No. I mean, just for full disclosure, I	7	1 Exhibit 1, do you have any other physical 2 documents that you brought with you? 3 A. I do not, no. 4 Q. Okay. And Exhibit 2, that's the -- 5 those are the native Excel versions of what you 6 provided? Right? 7 A. Yeah. Except -- something is not right 8 in this file. 9 Q. Okay. 10 A. It looks like some of the links are not 11 connecting. I have like a pound value, pound 12 value, pound value in the notes and in some of the 13 title screens -- 14 Q. Okay. Let me see. 15 A. But -- 16 Q. Let me see why that is. Let me see if I 17 can get the copy that I have locally, maybe I'll 18 replace it. 19 Problem here. 20 Okay. 21 A. Maybe we could look in the preview, let 22 me try downloading it from there and see if it 23 fixes. 24 Q. Yeah, so I think if you download it, it 25 will fix it. I just downloaded it, and it looks	9

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Lasinski, Michael J.

February 17, 2021

4 (Pages 10 to 13)

10	12
<p>1 to have -- doesn't have that pound value. I think 2 it's just in the preview screen. That doesn't 3 download all the information for the preview. 4 So you can go ahead and click download 5 on the right so that you have the full thing with 6 all the notes. 7 A. Yeah, I'm trying to download it now. It 8 seems like it downloaded, but then it -- it won't 9 open up. 10 Oh, wait, maybe now it will. 11 Okay, now it's -- now I have it. 12 Q. Is the version of Exhibit 2 that you 13 were able to download, does that have the -- the 14 linking issue, or is that one correct? 15 A. It's correct now. 16 Q. Okay, great. 17 A. It least it appears -- it appears to be. 18 Okay. 19 Q. Okay. I'm glad you sorted that out. I 20 think for the most part, we could use the paper 21 copies instead of the Excels, but if you prefer to 22 refer to the Excel, just let me know, and that way 23 I can open up the same document. 24 I think there's only one part of the 25 questioning where the Excel might be easier</p>	<p>1 certain things. 2 [REDACTED] 3 [REDACTED] 4 A. Yes. Correct. 5 Q. And at the very end, it says that you're 6 being compensated at a rate -- this is in 7 [REDACTED]. Is that 8 right? 9 A. That is accurate, yes. 10 Q. How much have you billed and accrued to 11 date? 12 A. Today, I think that we've billed about 13 [REDACTED] 14 Q. And -- 15 A. I don't know, you said "accrued." I -- 16 I don't know exactly what January -- yeah, what 17 January's bill will be. 18 Q. January -- you haven't billed out for 19 January yet; is that right? 20 A. No, I think it's -- I think that's 21 coming. 22 Q. And that's -- you served your expert 23 report 12 days in, so presumably there will be 24 [REDACTED]</p>
11	13
<p>1 because I could point to particular cells by 2 letter and number, where the printout obviously 3 doesn't have that, but I'll let you know when -- 4 when that is. 5 Otherwise, just let me know if you -- if 6 you prefer that we look at the Excel, and I can 7 look at the Excel with you as opposed to the paper 8 copy. Okay? 9 A. Yup. 10 Q. Okay. 11 Okay. So let's go ahead and start on -- on [REDACTED] 13 And just so you know, for full 14 transparency, the way I generally do this is I 15 sort of march through the report, more or less in 16 order. Sometimes I skip around a little, but it's 17 more or less just plowing through. 18 So that will give you a sense -- and 19 we'll have some exhibits that you refer to in here 20 that we'll mark as well, but otherwise, it's more 21 or less plowing through. 22 So you -- you'll have a sense, but some 23 modules might take longer than others, but that's 24 the way I do it. It's no -- no surprises, just 25 trying to find out what you have to say about</p>	<p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 MS. PEASLEE: Objection to form. 7 [REDACTED] 8 Q. Oh, sorry. 9 A. But -- today, and then there will be 10 January billings on top of that. That's me and my 11 colleagues at Ankura. 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 Q. Got it. 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 Q. Okay. Let's go ahead to the next page. 22 Looking under your "Assignment," which is labeled 23 as Section 3. 24 [REDACTED]</p>

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Lasinski, Michael J.

February 17, 2021

5 (Pages 14 to 17)

<p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5 And then you list the patents. Right?</p> <p>6 A. That is accurate, yes.</p> <p>7 Q. And then in the next paragraph you say,</p> <p>8 My investigation into potential recovery of</p> <p>9 monetary relief began with the necessary</p> <p>10 assumption that liability would be found against</p> <p>11 Cisco for the alleged infringement of the patents</p> <p>12 in suit.</p> <p>13 Right?</p> <p>14 A. That is what it said, you read it</p> <p>15 correctly.</p> <p>16 Q. And so you assume, for the purposes of</p> <p>17 your analysis, that the patents in suit are valid,</p> <p>18 and infringed, right?</p> <p>19 A. Correct.</p> <p>20 Q. And you don't have any opinions on</p> <p>21 infringement. Is that right?</p> <p>22 A. Correct.</p> <p>23 Q. And you don't have any opinions on</p> <p>24 validity; is that right?</p> <p>25 A. Correct.</p>	<p>14</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5 distinction that you were making, if Cisco -- if</p> <p>6 the jury finds that Cisco is not using the patents</p> <p>7 in suit, in other words, is not infringing, then</p> <p>8 the damages would be zero. Is that right?</p> <p>9 A. Again, you know, my understanding is</p> <p>10 that's always a legal conclusion. But that's not</p> <p>11 inconsistent with what I've seen in -- in cases</p> <p>12 and my history of being a damages expert.</p> <p>13 Q. I mean from an -- an economic</p> <p>14 perspective, that's true as well, in terms of --</p> <p>15 if Cisco is not using the patent, not infringing</p> <p>16 the patents in suit, the value of the patents in</p> <p>17 suit to Cisco would be zero in terms of the</p> <p>18 negotiation. Right?</p> <p>19 A. They would not have to pay for them,</p> <p>20 that's right.</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Q. So if the jury finds that the patents in</p> <p>suit are all invalid, there will be no damages</p> <p>due, right?</p> <p>A. Well, my understanding is that that's a</p> <p>legal conclusion, but based on history and other</p> <p>cases that I've worked on, that's what I found.</p> <p>Q. Okay. Maybe -- how about this one? If</p> <p>the jury finds that the patents are not infringed,</p> <p>there will be no value, right?</p> <p>A. Well, I wouldn't say no value. My</p> <p>understanding is that there wouldn't be an award</p> <p>of damages, but ultimately, that's a legal</p> <p>conclusion.</p> <p>Q. Right, there wouldn't be award of</p> <p>damages, but even if you were to try to assess the</p> <p>value to Cisco, if Cisco is not using the patents</p> <p>in suit for non-infringement purposes, the</p> <p>negotiation would result in a zero value because</p> <p>they're not using it, right?</p> <p>A. For -- for -- Cisco would not have to</p> <p>pay damages, that is accurate, yes.</p> <p>Q. Oh, God, I'm sorry. I understand my --</p> <p>the lack of clarity of my question.</p> <p>So just to be clear, because I think I</p> <p>said it very inartfully, until I caught on to the</p>	<p>15</p> <p>1 [REDACTED]</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Q. You're not a lawyer; is that right?</p> <p>A. That is correct.</p> <p>Q. And you're not a technical expert in</p> <p>this case; is that right?</p> <p>A. That is correct.</p> <p>Q. You're not an expert on the technology</p> <p>of MAP-T, M-A-P dash T. Is that right?</p> <p>A. That is accurate.</p> <p>Q. And you're also not an expert on MAP-E.</p> <p>Is that right?</p> <p>A. Again, I'm not a technical expert on</p> <p>MAP-E. I do have economic standards -- opinions</p> <p>on that, but I'm not a technical expert.</p> <p>Q. Right. And you also are not a technical</p> <p>expert in V -- VPLS LSM. Right?</p> <p>A. That is right. Correct.</p> <p>Q. And so to the extent there's technical</p> <p>discussions in your report about the various</p> <p>technologies, [REDACTED] s.</p>

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Lasinski, Michael J.

February 17, 2021

6 (Pages 18 to 21)

<p>18</p> <p>1 Q. Now, what you've done in this case is 2 present your opinion as to what the appropriate 3 level of damages are. Right?</p> <p>4 A. Correct.</p> <p>5 Q. Now, you're familiar with 35 U.S.C. 284?</p> <p>6 A. Yes.</p> <p>7 Q. And so, that -- what that says is, Upon 8 finding for the claimant, the Court shall award 9 the claimant damages adequate to compensate for 10 the infringement, but in no event less than a 11 reasonable royalty for the use made of the 12 invention by the infringer, together with 13 interests and costs as fixed by the Court. 14 You're -- you're familiar with that 15 statute? 16 A. I am, yes. 17 Q. And so, the analysis that you applied in 18 this case is consistent with the requirements of 19 Section 284; is that right? 20 A. That is correct. 21 Q. And within Section 284, what you're 22 focused on for this case is figuring out a 23 reasonable royalty for the use made of the 24 invention by the alleged infringer, right? 25 A. That is correct. I have a reasonable</p>	<p>20</p> <p>1 [REDACTED] ? 2 A. That is correct. 3 Q. And so to the ex-- sorry. 4 A. It is Appendix B. 5 Q. To -- to the extent a document is not 6 cited in your report or listed in Appendix B, fair 7 to say that you did not consider that document in 8 forming your opinions in this case? 9 A. Yes. With two exceptions. 10 Q. Okay. What were the exceptions? 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 Q. Okay. 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED] have either of those caused you to want to change or revise the opinions that you've laid out in</p>
<p>19</p> <p>1 royalty analysis. 2 Q. Now, to reach your reasonable royalty 3 analysis, you consider several materials from the 4 case, and I -- just for clarity, I've sort of 5 moved on to Section 4, "Information Considered." 6 A. Is there a question there? 7 Q. I'm sorry, let me say it again. I was 8 trying to tell you -- tell you where I was and ask 9 the question at the same time. So let me try it 10 again. 11 In considering -- or let me say it -- 12 say it differently. 13 In forming your opinions in this case, 14 you considered information relevant to the matter. 15 Is that right? 16 A. That is correct. 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED]</p>	<p>21</p> <p>1 Exhibit 1, which is your report? 2 A. No. 3 Q. You agree that in determining the 4 monetary relief in this case, the -- your economic 5 theory of damages must be tethered to the fact of 6 this case. Right? 7 A. Yes. 8 Q. So other than -- in -- in paragraph 13, 9 you say, It is important to note that the opinions 10 and conclusions contained in this report are based 11 on the information that has been made available to 12 me to date. 13 Do you see that? 14 A. Yes. 15 Q. Other than the two additional reports 16 that you mentioned, [REDACTED] 17 [REDACTED] is there any additional 18 information that you considered beyond what's 19 listed in Appendix B to your report? 20 A. No. 21 Q. Is it fair to say that the entirety of 22 your opinions in this case are contained within 23 your expert report, which is Exhibit 1? 24 A. My affirmative opinions, yes. 25 Q. You're drawing a distinction between</p>

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February 17, 2021

47 (Pages 182 to 185)

<p style="text-align: center;">182</p> <p>1 when -- then you take into consideration, you 2 know, we were already starting to get all those 3 other -- all of their other costs paid for, and 4 they can earn a profit margin on that. That's in 5 addition to that. I haven't attempted to 6 calculate those additional profits.</p> <p>7 Q. You said they can get all their other 8 costs paid for. What are you referring to?</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: center;">184</p> <p>1 back. [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] Now is that different than the Nash 6 bargaining approach where you're sitting there and 7 saying, you know, each party is going to get 50 -- 8 50/50 percent of the incremental profit in terms 9 of economically? Is that -- is that different, or is it just a different flavor?</p> <p>10 A. Yeah, the Nash bargaining theory is just 11 like the 25 percent rule, just some random 12 calculation that's being made.</p> <p>13 This is not that. Obviously I go 14 through four steps -- well, five steps, to get to 15 this point. So --</p> <p>16 Q. Well, I mean, most of the steps, in 17 fairness, are to try to figure out what the 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 A. I mean, in fairness, each one of the 23 steps is -- it -- equally important. 24 [REDACTED] 25 [REDACTED]</p>
<p style="text-align: center;">183</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>	<p style="text-align: center;">185</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 Q. But -- and -- and the profit split 7 methodology is basically you're just comparing -- 8 and that -- that's what we talked about earlier 9 [REDACTED] that's 10 basically another way of thinking about it is, 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 So to make sure that -- 20 Q. Yes. 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 Q. Now, a reasonable royalty calculated by 25 [REDACTED] really very highly dependent on</p>

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Lasinski, Michael J.

February 17, 2021

48 (Pages 186 to 189)

<p>186</p> <p>1 the profitability of the company that you're 2 dealing with. Right?</p> <p>3 A. Can I just finish? I was -- I was 4 starting --</p> <p>5 Q. I'm sorry.</p> <p>6 A. -- that question, so if I could just 7 finish that.</p> <p>8 Q. Yeah, I'm sorry.</p> <p>9 A. Then on top of that, I just want to make 10 sure that there's numerous areas where I was 11 conservative in my calculations, as I laid out in 12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 I'm sorry. So I completely missed your 15 last question.</p> <p>16 Q. I've got to get -- I've got to remember 17 it now too.</p> <p>18 Okay. So now, a reasonable royalty 19 calculated by [REDACTED] company as 20 whole that you're dealing with. Right?</p> <p>21 A. That's one of the things that you look 22 at is the profitability of the company.</p> <p>23 Or some (inaudible) like I did here.</p> <p>24 THE COURT REPORTER: I didn't hear that</p> <p>25</p>	<p>188</p> <p>1 Q. Okay. So let's talk about the -- 2 putting aside the -- the conversation about the 3 profit split. Let's talk about sort of adding up 4 the -- the units to get to your total excess 5 profit calculation.</p> <p>6 We talked about that, we -- we touched 7 on it briefly, but then we got into the discussion 8 about profit splitting. So I'd like to reset in 9 terms of tallying the -- the number of units. 10 Okay?</p> <p>11 A. Okay.</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p>187</p> <p>1 last.</p> <p>2 A. For some of the inputs, like, for 3 example, the normal operating profit margin here.</p> <p>4 Q. So, if you're calculating a royalty 5 based on a company's profitability in part, is 6 that consistent with a RAND license where you're 7 supposed to give the same royalty to all the 8 different licensees independent of their 9 profitability?</p> <p>10 A. Yes.</p> <p>11 Q. How -- how is that consistent?</p> <p>12 A. Because what we're -- what you're 13 supposed to do is, in my -- based on my work in 14 the RAND context, is use a similar methodology to 15 calculate what a royalty rate is.</p> <p>16 And as long as you use a similar 17 methodology to calculate what a royalty rate is, 18 you're consistent with the RAND framework.</p> <p>19 Q. So you can charge more to a company 20 that's more profitable and less to a company 21 that's less profitable?</p> <p>22 A. I'm not a legal expert on this, but my 23 understanding is that there's broad latitude under 24 how you determine royalties, and as long as you 25 treat similar companies similarly, that's allowed.</p>	<p>189</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. Okay. I -- I'm just looking at my 22 realtime. I think I may have spoken at the same 23 time but I caught the yes part.</p> <p>24 So, just to be clear, when you 25 calculated [REDACTED]</p>

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Lasinski, Michael J.

February 17, 2021

49 (Pages 190 to 193)

<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 And again, I'm just moving my answer 7 from the last time in case we didn't -- didn't get 8 it on the record.</p> <p>9 I understand that there may be some sort 10 of dispute about that, and that that's a legal 11 issue. So to the extent that there needs to be an 12 adjustment to that, that's something I could 13 consider.</p> <p>14 But at this time, I understand that it 15 does not need to necessarily be owned by a service 16 provider, owned or controlled by a service 17 provider.</p> <p>18 Q. Got it.</p> <p>19 [REDACTED]</p> <p>20 [REDACTED] But at the same time, you say, 21 a legal dispute, am I correct, that you don't 22 necessarily -- you're not taking a position on 23 that legal dispute, you're just -- your 24 calculation is assuming that whether it's service 25 provider or not does -- doesn't affect the</p>	<p>190</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 confusing more to you, and your answers have been 7 confusing more to me because I was -- flipped and 8 I was misspeaking.</p> <p>9 Let me see if I can go back and untangle 10 that mess. Thank you for that clarification.</p> <p>11 All right. Just so that we have a clear 12 record, because I'm having trouble finding it on 13 the -- on the real time here.</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 A. Correct.</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 Q. Okay.</p>
<p>1 numbers. Right?</p> <p>2 A. Well, that's not accurate. Obviously, 3 if -- if you -- if you include service providers 4 or you don't include -- or you -- and -- or you 5 don't include service providers or you include 6 more than just service providers, that does affect 7 the numbers.</p> <p>8 Q. Okay. I'm sorry, I was inarticulate.</p> <p>9 You said you understand that it's a 10 legal dispute. You don't have a position one way 11 or the other on that legal dispute, you're just 12 making an assumption with respect to whether or 13 not you should be including service providers, and 14 you're including them based on your assumption. 15 Is that right?</p> <p>16 A. Yes.</p> <p>17 Just to make sure that the record is 18 clear, though, I -- I think you were asking me, 19 when you started this line of question, whether or 20 not you should include non-service providers. And 21 now you're asking me whether or not I should 22 include service providers.</p> <p>23 Q. Oh. Yeah, well, I'm sorry. You're -- 24 you're right, as I would expect.</p> <p>25 And I guess my -- my questions have been</p>	<p>191</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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February 17, 2021

55 (Pages 214 to 217)

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1	that's a technical question. Right?		
2	A. That is a technical question.		
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Lasinski, Michael J.

February 17, 2021

56 (Pages 218 to 221)

	218	
1	[REDACTED]	
2	[REDACTED]	
3	[REDACTED]	
4	[REDACTED]	
5	[REDACTED]	
6	A. Hold on. I think –	
7	Q. I'm sorry. 210. I misspoke, 210.	
8	A. Okay.	
9	Q. You say, At this time, I have not	
10	derived royalty indicators by reference to the	
11	produced patent -- the produced licenses; however,	
12	it is [REDACTED]	
13	[REDACTED]	
14	[REDACTED]	
15	Right?	
16	A. Correct.	
17	[REDACTED]	
18	[REDACTED]	
19	[REDACTED]	
20	[REDACTED]	
21	[REDACTED]	
22	[REDACTED]	
23	[REDACTED]	
24	[REDACTED]	
25	[REDACTED]	
	219	
1	[REDACTED]	
2	[REDACTED]	
3	[REDACTED]	
4	[REDACTED]	
5	[REDACTED]	
6	[REDACTED]	
7	[REDACTED]	
8	[REDACTED]	
9	[REDACTED]	
10	Q. And the same thing is true with the --	
11	or let me step back.	
12	There is no dispute in this case about	
13	Cisco paying a lump sum. You and Mr. Reading	
14	agree on that, right?	
15	A. Correct.	
16	[REDACTED]	
17	[REDACTED]	
18	[REDACTED]	
19	[REDACTED]	
20	[REDACTED]	
21	[REDACTED]	
22	[REDACTED]	
23	[REDACTED]	
24	[REDACTED]	
25	[REDACTED]	
	220	
1	[REDACTED]	
2	[REDACTED]	
3	[REDACTED]	
4	[REDACTED]	
5	[REDACTED]	
6	[REDACTED]	
7	[REDACTED]	
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11	[REDACTED]	
12	[REDACTED]	
13	[REDACTED]	
14	[REDACTED]	
15	[REDACTED]	
16	[REDACTED]	
17	[REDACTED]	
18	[REDACTED]	
19	[REDACTED]	
20	[REDACTED]	
21	[REDACTED]	
22	[REDACTED]	
23	[REDACTED]	
24	[REDACTED]	
25	[REDACTED]	
	221	
1	on non-infringing alternatives. You rely on -- on	
2	Dr. Walker; is that right?	
3	A. Yes.	
4	Q. And you don't have a sufficient	
5	technical background to know whether a particular	
6	technology would be technically acceptable.	
7	Right?	
8	A. I don't -- I don't have -- yes, I do not	
9	have that background.	
10	Q. And you haven't done any analysis about	
11	whether a particular technology would be	
12	economically accessible, right? Acceptable.	
13	A. Okay.	
14	Q. Let me say it -- let me say it again.	
15	I'm sorry. I -- I misspoke.	
16	You haven't done any economic analysis	
17	about whether any of the proposed alternatives	
18	would be economically acceptable.	
19	A. Not -- not the non-infringing	
20	alternatives that have been identified by Cisco.	
21	Q. If a Cisco witness were to tell the jury	
22	that in the U.S. customers are actually using the	
23	alternatives and that they're commercially	
24	acceptable to Cisco's customers, would you agree	
25	that that would impact the reasonable royalty in	

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Lasinski, Michael J.

February 17, 2021

57 (Pages 222 to 225)

<p>1 this case?</p> <p>2 A. I don't know how to answer that. As I</p> <p>3 sit here, my understanding is that there are no</p> <p>4 non-infringing alternatives at that are</p> <p>5 acceptable. So if the jury were to think that</p> <p>6 there were acceptable non-infringing alternatives,</p> <p>7 that's not part of my opinion.</p> <p>8 Q. I guess, let me -- let me phrase it this</p> <p>9 way: You're aware that there's this dispute about</p> <p>10 whether or not there are available non-infringing</p> <p>11 alternatives, right?</p> <p>12 A. Correct.</p> <p>13 Q. And you have assumed, based on your</p> <p>14 reliance on what Dr. Walker told you, that there</p> <p>15 are no non-infringing alternatives available to</p> <p>16 the parties at the hypothetical negotiation.</p> <p>17 Right?</p> <p>18 A. Correct.</p> <p>19 Q. If, instead, I were to ask you to assume</p> <p>20 that there were, in fact, non-infringing</p> <p>21 alternatives available to the parties at the</p> <p>22 hypothetical negotiation, you would have to redo</p> <p>23 your analysis to consider that fact, right?</p> <p>24 A. If I were -- yes, if I'm being asked to</p> <p>25 assume that a fact is inconsistent with the facts</p>	<p>222</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>224</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p>1 that I've assumed for my analysis, I would need to</p> <p>2 think about -- I don't know if I would need to</p> <p>3 redo my analysis or not, but I would need to think</p> <p>4 about whether or not it would impact my analysis.</p> <p>5 Q. Okay. And you have not thought about</p> <p>6 how and if the availability of non-infringing</p> <p>7 alternatives, if you were to assume they were</p> <p>8 available, how that would impact your analysis.</p> <p>9 True?</p> <p>10 A. Correct.</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>223</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>225</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>